In my view, there is neither principle nor authority to suggest that the absence of a jury in a defamation trial affects the rationale of the established principle. In such a situation, the judge assumes the role of the jury in determining whether the words used are defamatory or, where justification is pleaded, whether the defendant has made out such a defence. But, until the action is tried, the judge is in exactly the same position as a jury, in a trial where there is a jury. Like a jury, a judge is also in no position to say whether the defence has been established until he has heard all the evidence. But, even assuming that the jury point has some merit, the public interest in maintaining the right of free speech is in itself a sufficient reason to justify the denial of prior restraint where the defendant intends to justify the truth of his statements: see Oliver J in *Bestobell Paints Limited* v *Bigg*[6] at p 430 et seq. The plaintiff has not made out a case for this court not to follow the English authorities. I should add that where, as is the case of Singapore, freedom of speech is a constitutional liberty, the case for applying the principle established by the English courts in such a case is a fortiori. The application is dismissed with costs.

Application dismissed.

Solicitors: *Harry Elias & Partners; Chow Peng & Partners; WT Woon & Co.*

Reported by *Terence Tan Bian Chye*

Michael Raymond Taylor v Public Prosecutor

HIGH COURT (SINGAPORE) - MAGISTRATE'S APPEAL NO 33 OF 1988
CHUA J
27 APRIL 1989

Criminal Procedure - Bail - Whether magistrate has power to set bail for person who 'appears' in obedience to a summons - Person not under arrest - Companies Act (Cap 50, 1985 Ed), s 402(1)(c) - Criminal Procedure Code (Cap 68, 1985 Ed), ss 54(b) & 351(1), (2), Sch A, Form 1 of Sch B - Criminal Procedure Code [India], ss 437 & 438(1)

Words and Phrases - 'Appears before a court' - Criminal Procedure Code (Cap 68, 1985 Ed), s 351(1)

The appellant was served with a summons requiring him to attend court to answer charges under the Companies Act. On the return date of the summons, when he appeared before a magistrate, the proceedings were adjourned and the appellant was released on bail of $150,000 in one surety. The appellant appealed against the magistrate's order requiring him to furnish bail. His main contention was that the magistrate had no power to make such an order. The appellant argued that as he had appeared in court in obedience to the summons, he does not come within any category of persons set out in s 351 of the Criminal Procedure Code ('CPC') who is to be released on bail by the court. Only after he has failed to appear that the magistrate may issue a warrant for his arrest and may endorse on the warrant a direction regarding the furnishing of bail. The appellant conceded that the magistrate was right in holding that s 402(1) of the Companies Act creates a bailable offence but submits that he was wrong in holding that s 351 of the CPC applied.

Held, dismissing the appeal:

(1) The magistrate is correct in his view that a person who is served with a summons and in obedience thereto 'appears' in court is within the meaning of s 351 of the CPC.

(2) This construction is supported by a reading of the form of the summons, Form 1 of Sch B, where the words used are 'You are required to appear'. Judicial interpretation supports the magistrate's view that 'appears' means 'appears in answer to a summons'.

(3) Appearing before a court in obedience to a process of the court constitutes a form of restraint since his liberties are no longer unfettered. A person who 'appears' before a court in obedience to a summons surrenders himself to the custody of the court.

(4) There is no express requirement that an arrest is a precondition for bail in bailable offences. No reliance can be placed on the dicta of Indian cases that assume such a requirement, especially since those cases dealt with a provision which is not found in our CPC.

(5) If it was intended that s 351 should apply to bailable offences where arrest had been effected prior to a person's court appearance, then the legislature would not have employed the disjunctive word 'or'. The magistrate noted this and was correct in his construction of the section.

(6) The magistrate has to exercise his discretion judicially. He has properly done so in requiring bail of $150,000 as the charge was a grave one. It concerned furnishing misleading statements to the Securities industry Council with intent to deceive. In addition, the appellant was not a local citizen.

Cases referred to

1 *Ram Chandra* v *State of Uttar Pradesh* [1977] Cri LJ 1783 (refd)
2 *The State* v *Santokh Singh* AIR 1960 Punjab 31 (follid)
3 *R* v *Tottenham Juvenile Court* [1982] 2 All ER 321 (follid)
4 *Bhramar* v *State of Orissa* [1981] Cri LJ 1057 (follid)
5 *State* v *Dallu Punja* [1954] Cri LJ 1052 (follid)
6 *PP* v *Manikya Rao* AIR 1959 Andra Pradesh 639 (refd)
7 *Niranjan Singh* v *Prabhakar Rajaram* AIR 1980 SC 785 (refd)
8 *State of Uttar Pradesh* v *Kailash* AIR 1955 Allahabad 98 (follid)
9 *State of Gujarat* v *Govindal* AIR 1966 Gujarat 146 (follid)

Legislation referred to

Companies Act (Cap 50, 1985 Ed) s 402(1)(c)
Criminal Procedure Code (Cap 68, 1985 Ed) ss 54(b), 351(1), (2), Sch A, Form 1 of Sch B
Criminal Procedure Code [India] ss 437, 438(1)

Warren Khoo (*Tan May Tee* (*Miss*) with him) for the appellant.
John Koh and *Rosalind Lazar* (*Miss*) for the respondent.

Cur Adv Vult

Chua J: The appellant Michael Raymond Taylor was served with a summons issued by a magistrate on 11 January 1988, requiring him to attend court on 18 January to answer to two charges under s 402(1)(c) of the Companies Act (Cap 50, 1985 Ed). On the return date of the summons the appellant appeared before a magistrate. The charges were read to the appellant who pleaded not guilty. The proceedings were then adjourned for three weeks and the appellant was released on bail of $150,000 in one surety. The appellant appealed against the magistrate's order ordering him to furnish bail. At the conclusion of the hearing of the appeal I dismissed the appeal. I now give my reasons.

The main contention of the appellant is that the magistrate has no power to require the appellant, who appeared before the court on a summons, to furnish bail for his release. This appeal concerns the magistrate's jurisdiction over accused persons in cases commenced by summons, specifically the magistrate's power to release the accused on bail under s 351 of the Criminal Procedure Code (Cap 68) ('the Code'). Section 351 of the Code provides when a person may be released on bail and it reads:

> 351(1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by a police officer or appears or is brought before a court and is prepared at any time while in the custody of the officer or at any stage of the proceedings before the court to give bail, that person shall be released on bail by any police officer in such cases as are specified in orders issued by the Commissioner of Police or by that court.
>
> (2) The police or the court, if he or it thinks fit, may, instead of taking bail from that person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

It is clear from the last section of Sch A to the Code headed 'Offences Against Laws Other than the Penal Code' that for the offences with which the appellant is charged (1) that the police shall not arrest without a warrant; (2) that a summons shall ordinarily issue in the first instance; (3) that the offences are bailable of right. In this case a summons was issued by the magistrate in the first instance.

The arguments and submissions of counsel for the appellant are these. It was left to the appellant to attend court at the appointed date and time in obedience to the summons. The appellant, who had appeared in court in obedience to the summons, does not come within any category of persons set out in s 351 who is to be released on bail, after his appearance, by the court. It is only if the appellant has failed to appear that the magistrate may issue a warrant for his arrest under s 54(b) of the Code and may endorse on the warrant a direction regarding the furnishing of bail. It is submitted that there is no provision for sanction in s 351 in the case of the person who 'appears' before a court who is not prepared to give bail. He, therefore, cannot be placed in custody but must be released. The liberty of the subject being the norm any restraint on it must be expressly provided for by law. There can be no question of a magistrate having power by necessary implication to remand a person to custody. The magistrate can remand a person to custody only when he has express power to do so (*Ram Chandra* v *State of Uttar Pradesh*[1] at p 1787 para 15). The conception of 'bail' is to set at liberty a person, arrested or imprisoned, on security being taken for his appearance in court. It is submitted that a person who is under no previous restraint does not need any order of bail as he is free to move about as he likes. Mr Khoo in support of his submissions cited a number of Indian cases. To put it shortly Mr Khoo's argument is that as far as the appellant is concerned s 351 is applicable only if he has been arrested or a warrant for his arrest has been issued. So much for Mr Khoo's arguments and submissions.

The magistrate was correct in his interpretation and application of Sch A of the Code and was correct in holding that s 402(1)(c) is a bailable offence. The appellant concedes that but submits that he was wrong in holding that because it was a 'bailable offence' therefore s 351 applied. Section 351 covers several categories of persons. It applies to all cases of persons accused of bailable of fences. In *The State* v *Santokh Singh*[2] the court in dealing with s 496 of the Indian Criminal Procedure Code (which is in pari materia with our s 351) held (p 31):

> Thus the substantive portion of s 496 applies to all persons except those accused of non-bailable offences. Furthermore, the provisions of this section are applicable not only to persons who are arrested or detained by an officer in charge of a police station, but also to persons who appear or are otherwise brought before a court.

The contention of the appellant is that his appearance before the court is not within the context of s 351. He further argues that though he is entitled to bail, his release need not be secured by bail or personal bond.

The magistrate was correct in his view that a person who is served with a summons and in obedience thereto 'appears' in court within the meaning of s 351. This construction is supported by a reading of the form of a summons, Form 1 of Sch B, where the words used are 'You are hereby required to appear'. But in relation to the issuance of a warrant, Form 2 of Sch B, the 'Commissioner of Police is directed 'to arrest the said.... and to produce him before the court.' Judicial interpretation of 'appears' also supports the magistrate's view that 'appears' is 'appears in answer to a summons' (see *R* v *Tottenham Juvenile Court*[3] at p 326). In *Bhramar* v *State of Orissa*[4] PK Mohanti J referring to s 437 of the Indian Criminal Procedure Code, when bail may be taken in case of non-bailable offence, stated (at p 1059) that the expression 'is brought before a court' is used in relation to the

issue of a warrant, while the expression 'appears' is used in relation to the issue of a summons. A similar view was expressed in *State* v *Dallu Punja*[5] at p 1053. It was held in *PP* v *Manikya Rao*[6] at p 641 that the words 'is brought before a court' involve the idea that the 'accused is produced before a court' and the word 'appear' that the accused has surrendered himself in obedience to a process of court. This would obviously include a summons.

Appearing before a court in obedience to a process of the court constitutes a form of restraint since his liberties are no longer unfettered. In *Bhramar*[4] PK Mohanti J said (p 1059):

> A person, knowing that a warrant or summons has been issued against him, may voluntarily surrender, and thus, submit himself to the jurisdiction of the court. Evidently in such cases, the accused is under a restraint and he appears and moves for being enlarged on bail.

A person who 'appears' before a court in obedience to a summons surrenders himself to the custody of the court. In *Niranjan Singh* v *Prabhakar Rajaram*[7] the Supreme Court of India held that:

> Where the accused had appeared and surrendered before the sessions judge, the judge would have jurisdiction to consider the bail application as the accused would be considered to have been in custody within meaning of s 439. Custody, in the context of s 439, is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.
>
> He can be in custody not merely when the police arrests him, produces him before a magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions.

It was held in *State of Uttar Pradesh* v *Kailash*[8] at p 99 that when a person appears in court, his very physical presence results in his placing himself in the custody of the court.

The magistrate, therefore, did not err in law when he held that:

> in the case of a person who appears in court in obedience to a summons, his presence in court places him in the jurisdiction of the court...;

and that:

> It is my view that the accued in the present case was under a restraint as he had appeared before the court in response to a summons which had been issued against him...

The appellant seeks to restrict the operation of s 351 by confining the order of the court to furnish bail only to persons who have been arrested or where a warrant for arrest has been issued. There is no express requirement that an arrest is a precondition for bail in bailable offences. This condition is inferred from the Indian cases relied upon by the appellant. No reliance can be placed on the dicta of the Indian cases that assume such a requirement. Those Indian cases dealt with s 438(1) of the Indian Criminal Procedure Code where it is provided that:

> 438(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section, and that court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail (anticipatory bail).

We do not have a similar provision in our Code. The facts in those Indian cases were that the applicants under s 438(1) had not been arrested but had reason to believe that they might be arrested on an accusation of having committed a non-bailable offence. The preponderance of judicial opinion in India is in favour of the view that no such anticipatory bail could be granted. The reason is that it is implied in the very definition of the word 'bail' that a person must be under some sort of restraint and the order of releasing a person on bail would set free a person who was under arrest, detention or under some kind of restraint by taking security for his appearance (see *State of Gujarat* v *Govindal*[9]).

If it was intended that s 351 should apply to bailable offences where arrest had been effected prior to his appearance in court, then the legislature would not have employed the disjunctive word 'or'. If prior arrest was intended to be a necessary precondition then s 351 should read:

> When any person other than a person accused of a non-bailable offence is arrested or detained without a warrant by a police officer *and* appears *and* is brought before a court...

Section 351 contains a few limbs. The relevant portion of the section reads as follows:

> is arrested *or* detained without warrant by a police officer *or* appears *or* is brought before a court...

The magistrate gave the right construction by noting the use of the disjunctive 'or' when he said in his grounds of decision:

> In my view, the employment of the word 'or' in the quoted lines makes it clear that each limb must be read disjunctively so that this provision must be read as referring to a situation where a person is arrested without warrant or is detained, or a person who is served with a summons and, in obedience thereto, 'appears' in court. He may also 'appear' in court after he has been arrested, where, after his arrest, he has been released on bail by the police. The word 'appears', therefore, will cover both the latter instances.

The magistrate was right in his view that s 351 of the Criminal Procedure Code (Cap 68) 'does empower the court, in order to secure the future attendance of a person who has appeared before it in obedience to a summons, ordering his appearance thereto, to order such a person to furnish bail. The court's discretion to impose bail under s 351 of the Criminal Procedure Code (Cap 68) should not be impeded simply on the ground that the offences were non-seizable (ie no arrest without warrant).'

The magistrate has to exercise his discretion judicially. In my view he has properly exercised his discretion

in the present case in requiring bail of $150,000 in one surety. A charge under s 402(1)(c) of the Companies Act is a grave one. In this case it concerns furnishing misleading statements to the Securities Industry Council with intent to deceive. It carries a penalty of a fine not exceeding $10,000 or imprisonment for a term not exceeding two years or both. Furthermore the appellant is not a local citizen. For these reasons the appeal was dismissed.

Appeal dismissed.

Solicitors: *Warren Khoo & Co.*

Reported by *Terence Tan Bian Chye*

Management Corp Strata Title No 1124 v Teh Poh Hwa & Ors

HIGH COURT (SINGAPORE) - APPEAL IN DC SUIT NO 5313 OF 1988
AP RAJAH J
4 APRIL 1989

Land Law - Landlord and tenant - Tenant sought to be evicted - Whether new owner was landlord - Tenancy by estoppel - Tenant exercising option to renew lease - Whether exercise of option performed in time

Evidence - Burden of proof - Tenant bore burden to prove timely exercise of option

The developer of a building had rented out a part of it to the first defendant for a period of two years with an option to renew for a further one year. The plaintiff later took over the management of the building and, after the expiry of the first defendant's two-year lease, sought to evict the first defendant and the other occupants of the premises as trespassers. The first defendant in her defence stated that she only had a legal relationship with the developer and not the plaintiff. She also claimed that she had exercised her option to renew by a notice to the plaintiff. The plaintiff sought to obtain an O 14 judgment against her. The deputy registrar who heard the matter gave the first defendant unconditional leave to defend. The plaintiff appealed.

Held, allowing the appeal:

(1) The first defendant had paid rent to the plaintiff for a period of time during the lease and documents evidence this fact. The first defendant was therefore estopped by attornment from disputing the plaintiff's title. She had by her act put the plaintiff in place of the developer as her landlord.

(2) The first defendant's notice of the exercise of the option to renew was only received after the time allowed. The tenancy agreement required that she send the notice by registered post. It was for her to prove her allegation that she had sent the notice by registered post before the deadline and she had failed to do so. The decision of the registrar was therefore set aside and judgment was given for the plaintiff. Costs of the action there and below to the plaintiff.

[*Editorial Note*: The plaintiff has appealed to the Court of Appeal vide Civil Appeal No 24 of 1989.]

Legislation referred to
Evidence Act (Cap 97, 1985 Ed)

Chew Teck Lim for the plaintiff/appellant.
SK Chua for the first defendant/respondent.

Cur Adv Vult

AP Rajah J: The plaintiff, the Management Corporation Strata Title No 1124, came into being when the strata title plan was registered on 8 July 1986. Prior to the formation of the said Management Corporation Textile Development Pte Ltd, the developer was in charge and was responsible for the maintenance and management of the common areas. The management of the common property was actually taken over by the plaintiff on or about 29 November 1986 after the first annual general meeting pursuant to the provisions under the Land Titles (Strata) Act (Cap 158).

The plaintiff, which comprises all the subsidiary proprietors as tenants in common in shares proportionate to the share value of each unit are and were at all material times the owners of part of the common property described as #08-04, Macpherson Industrial Complex, Singapore 1334 (hereinafter referred to as 'the said premises'). The said Textile Development Pte Ltd as agent for and on behalf of the plaintiff, by an agreement dated 1 August 1986 let to the first defendant as tenant the said premises for a term of two years from the first day of August 1986 at a monthly rent of $1,200 payable in advance on the first day of each calendar month and thereafter in the event of the tenant exercising the option as stipulated in cl 6 for a further term of one year. Clause 6 of the agreement reads as follows (encl 8 exh LLH-2 p 9):

> 6 And for further consideration the landlord hereby grants the tenant an option to renew this tenancy to the demised premises for a further period of one year on the same terms and conditions with the exception of rental which is to be negotiated accordingly. The tenant shall exercise this option in writing three (3) months before the expiring of the term hereby created.

The plaintiff claims that the defendant not having given proper notice for the extension of the tenancy, the said term expired by effluxion of time on 1 August 1988 yet the first defendant has thereafter remained and now remains in occupation of the premises together with the other occupants as trespassers. The defendant's two defences are set out in paras 6 to 9 of her affidavit filed on 30 November 1988 (encl 9).

First defence: In para 6 of her affidavit she says that 'the only legal relationship I have in terms of this tenancy is with Textile Development Pte Ltd'. In answer to this the plaintiff says (encl 12 para 2) that the defendant had